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Paper 24
Entered: 25 March 2008

UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference 105,612 McK
Technology Center 3700

SHUNJI OHSUMI, YASUHIRO FUKUI,
KENJI BABA, and HIROYUKI NAITO,

Patent 5,743,816,
Junior Party,

v.

HISASHI YAMAGISHI, HIROSHI HIGUCHI,
YASUSHI ICHIKAWA, and JUNJI HAYASHI,

Application 08/898,853
US Publication 2002/0034987 A1,
Senior Party,

*Before: McKELVEY, Senior Administrative Patent Judge, and SCHAFER
and MOORE, Administrative Patent Judges.*

McKELVEY, Senior Administrative Patent Judge.

JUDGMENT

A conference call took place on 19 March 2008 at approximately 2:00
P.M. (1400 EDT) in which counsel and one judge participated.

The original purpose of the conference call was to discuss motions
lists.

1 The junior party has indicated that it does not intend to file any
2 motions. Paper 23.

3 The conference call confirmed that the junior party would not file any
4 motions.

5 Because the junior party cannot prevail unless it files at least one
6 motion (e.g., a motion for judgment on priority) and since the junior party
7 does not intend to file any motions, it is appropriate at this time to enter a
8 judgment against the junior party.

9 Both parties had submitted copies of their respective priority papers
10 along with translations of those papers.

11 The Board had offered to review the papers and determine whether
12 one or both of the parties might be entitled to an earlier constructive
13 reduction to practice.

14 However, since the junior party will not file any motions, there is no
15 need to determine whether an earlier constructive reduction to practice
16 should be accorded to either party.

17 Upon consideration of record, including the discussion during the
18 conference call, it is

19 ORDERDED that judgment on priority as to Count 1 (the sole
20 count in the interference; Paper 1, page 9) is awarded against Junior Party
21 Shunji Ohsumi, Yasuhiro Fukui, Kenji Baba, and Hiroyuki Naito.

22 FURTHER ORDERED that Junior Party Shunji Ohsumi,
23 Yasuhiro Fukui, Kenji Baba, and Hiroyuki Naito is not entitled to a patent
24 containing claims 1-7 (corresponding to Count 1) of:

25 U.S. Patent 5,743,816
26 issued 28 April 1998
27 based on application 08/835,023
28 filed 27 March 1997

1 FURTHER ORDERED that claims 1-7 of U.S. Patent
2 5,743,816 are cancelled. 35 U.S.C. § 135(a).

3 FURTHER ORDERED that if there is a settlement agreement,
4 attention is directed to 35 U.S.C. § 135(c).

5 FURTHER ORDERED that a copy of this JUDGMENT shall
6 be placed in the files of (1) U.S. Patent 5,743,816 and (2) application
7 08/898,853.

8 FURTHER ORDERED that the Clerk is directed to distribute
9 the files upon entry of this JUDGMENT.

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